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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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• (1630)

[English]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): *Bonjour à tous.* Welcome to the 59th meeting of the Standing Committee on Industry, Science and Technology.

Today we have the Minister for Industry, Science and Technology with us, Minister Clement.

Just before I go to Minister Clement's opening remarks, Mr. Rota, did you want to mention your notice?

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): Yes. I've got a motion before the committee that notwithstanding any previously scheduled committee activity, the committee invite Tony Clement, the Minister of Industry, and Gary Goodyear, Minister of the Federal Economic Development Agency for Southern Ontario, to testify on the supplementary estimates (C) 2010-2011, on March 10, 2011, from 3:30 to 5:30.

I think it's fairly straightforward. The minister is here, and we're just so happy to have him that we want him back.

The Chair: Thank you, Mr. Rota.

We won't have anybody speak to that right now. That's simply a notice of motion by Mr. Rota for that to be discussed on Thursday.

Now, Minister Clement, we're glad to have you here, and we'll go to your opening remarks, sir.

Hon. Tony Clement (Minister of Industry): Thank you, Chair.

Thank you, colleagues of the committee. Thank you for inviting me here today to share my thoughts on the topic of usage-based billing for wholesale Internet services, as well as some broader thoughts.

[Translation]

As Canada's Industry Minister, it is my job to help encourage an innovative and competitive market place, and to ensure Canadian consumers have real choices in the services they purchase.

[English]

While information and communication technologies represent only about 5% of our country's GDP, I truly believe—and the statistics bear this out—that they drive the performance of the other 95%. ICT is the engine that propels us and the fuel that drives us, and we must never lose sight of the importance of information and communication technologies.

That's why I've made ICT and the digital economy, more broadly, one of my personal priorities as industry minister, and it is why I will be launching Canada's first comprehensive digital economy strategy later on this spring.

I want to make sure, as well, that consumers are not left out when we talk about Canada's digital economy and plan for it. Of course businesses are important, and I'll speak about that in just a couple of minutes. Of course academia and government initiatives are important too. But if we lose sight of the consumer, I think we lose sight of something critically important to the success of the digital economy strategy and of the economy more generally.

Now, what do I mean by that? Well, it's clear that more competition and more choice for consumers helps the adoption of the digital economy. It helps us to be competitive. It helps us to be innovative. It helps us to be creative as citizens, and it also helps our small businesses to succeed. All of these things are going to be necessary for a society that is built on the knowledge economy.

Our goal is to find the right balance for the marketplace to provide the right environment for entrepreneurs to flourish, for innovative new ideas to take root, and for real opportunity and real job creation.

[Translation]

We need to make sure that government telecommunications policies encourage investment and competition, increase consumer choice, minimize regulation and allow market forces to prevail. These are our policies and this is our focus.

Without doubt, Canadian telecommunications carriers have made significant infrastructure investments in the past few years. As a result, Canadians now have access to multiple advanced networks and world-class services across Canada.

[English]

Canadian carriers are investing because it pays for them to do so. They are responding to demands from customers. They also themselves stimulate demand to add new services and higher speeds via their advertising and promotion.

In response to this new consumer environment, back in 2006 our government issued a policy direction to the CRTC that recognized the importance of competition and fairness.

• (1635)

[*Translation*]

The Policy Direction instructed the CRTC to rely on market forces to the maximum extent feasible and, when using regulatory measures, to ensure technological and competitive neutrality where possible, to enable competition from new technologies and not to artificially favour either incumbents or independent Internet service providers.

[*English*]

The policy direction stated that regulation, when necessary, should be light-handed and proportionate to its purpose.

Turning directly to the issue of usage-based billing, let me say that access to the Internet is an increasingly important part of the lives of Canadians. And I would say that it's more than just important; actually, it means that in today's day and age, Internet access is fast becoming a crucial part of the social and economic fabric of the country. Affordability and choice are central to the ongoing dialogue. We are certainly all well aware of the importance of broadband networks for business innovation.

In this context, the CRTC decision on usage-based billing for wholesale ISPs is quite simply the wrong way to proceed, and is inconsistent with good public policy. Independent ISPs must not be forced to adopt the same retail pricing strategy as the incumbents. To do so is to limit consumer choice and remove meaningful competition from the market.

Moreover, in this year, in 2011, designated by our government as the “Year of the Entrepreneur”, if such a decision were allowed to stand, the effects would be far-reaching not only for consumers but also for entrepreneurs, creators, innovators, and small businesses throughout the country.

Furthermore, there are many new and innovative businesses taking root right here in Canada that depend on being able to provide services or content to their customers over the Internet. The cutting edge of cloud computing services relies on customers and clients—many using residential lines—having fair and affordable Internet access. Without the right competitive pressures, usage-based billing threatens to choke off these types of innovative businesses and the benefits they can bring to Canadian consumers and Canada's digital economy.

Turning now to the independent ISPs themselves, the fact is that in many cases these companies are doing far more than simply reselling incumbent network services. Indeed, they often provide more than simple Internet access. Many provide a different end product to their users, sometimes serving niche markets that, while relatively small as compared with the retail market of incumbent carriers, are vital to promoting innovation, competition, and consumer choice.

Chair, I have heard from a great many Canadians on this file. I've had the benefit of literally hundreds of thousands of Canadians communicating with me and the government on the issue before the CRTC and also on broader issues—retail pricing, service quality and availability, the current state of choice in Canada, net neutrality, and other related issues. I want to thank Canadians publicly for participating in this ongoing and critical discussion of these matters.

I think the point that is key right here, right now, the point that I take away from that ongoing discussion with Canadians—for now—and the point that has been articulated by many, including the wholesale ISPs themselves, is that the best way to generate real consumer choice and an alternative to UBB is to ensure that there is in fact vigorous competition.

The CRTC does not regulate retail pricing, and as long as we address the issue before us today to ensure robust and fair wholesale competition, there should be no need to regulate retail in the future as well.

I do believe that network owners have a reasonable expectation to be fairly compensated for their ongoing investment, but this must be done in a way that does not limit consumer choice. I expect that a variety of stakeholders will raise better alternatives to what was originally contemplated by the CRTC in the CRTC's review process, and that the CRTC no doubt will consider these options.

• (1640)

We all benefit if Canadians have access to the advanced networks, the choice of service offerings, and the opportunities to benefit from emerging technologies and services, which together constitute a vibrant digital economy.

The government will continue to monitor industry developments to ensure that Canada's policy and regulatory frameworks remain effective.

If the CRTC's decision does not adequately address the needs of Canadian consumers, small businesses, and innovators and creators, the government has powers under the Telecommunications Act to intervene.

Finally, Chair, on the question of throttling and congestion, when the CRTC does look at issues of network congestion and how it affects Internet service providers, there's already a framework under which Internet traffic management must be handled. The first priority for managing congestion must be investment in newer and better networks. Clearly it's in the best interests of all ISPs to continually work to provide better network access and speeds as part of a competitive business mode.

However, investing in networks may not be able to solve every problem, or it may not be the most practical way to overcome a given challenge. In these cases the CRTC allows for transparent economic measures to be used to help ease network congestion—the key word here is “transparent”.

The issue of network congestion and whether it in fact exists, and if it exists at a level that incumbent ISPs claim, is a subject of some debate. However, what is clear is there is nothing transparent about applying or imposing usage-based billing on independent ISPs. There's nothing transparent about how the imposition of this business model has any direct correlation to the real costs of provision of wholesale services.

In conclusion, Mr. Chair, our government is focused on the economy and creating a positive environment for job creators and for businesses to flourish. Canadians can count on us to do what is in the best interests of consumers.

Thank you for the opportunity to speak here today. I'm pleased to take any questions the committee may have.

The Chair: Thank you, Minister Clement.

Now we'll go to the first round of questions.

Mr. Garneau, for seven minutes.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

Thank you, Minister, for appearing today.

You'll forgive me for some skepticism. I think you're very good at talking the talk, but you have a less than stellar performance in terms of walking the talk.

I have also listened to a great many Canadians and many of the players in the telecom sector. You mentioned thousands, and I trust we're not simply talking about tweets here, that we're actually having serious conversations—you, being the Minister of Industry.

I sense a giant policy vacuum in this country. Your government has been in power for five years, and what I'm hearing from the telecommunications sector is a crying demand for some policy direction. It is not that surprising that you frequently overturn the CRTC when they make a decision because they themselves are working in a policy vacuum. They are also in need of direction from you and from Industry Canada, so when they do make a ruling it is not something that ends up being overturned; you in fact are speaking to them and you're on the same wavelength. In the proper order of things, overruling of the CRTC should be an extremely rare event.

Passing over the issue of UBB itself, I would like to ask about the procedure by which you notified the president of the CRTC that you were going to object to his ruling.

I spoke to Konrad von Finckenstein when he appeared in front of our committee a little while ago, and I asked him how he was notified that you did not agree with the CRTC's ruling. He told me that neither you nor the ministry were in contact with him, but that he found out like everybody else, through one of your tweets.

Are we in fact setting government policy and decisions by means of 140 characters that you send out in the middle of the night to tell the CRTC, a respected regulatory body, how decisions are made in this country?

• (1645)

Hon. Tony Clement: Let me comment on a couple of things you've said, if I may, Mr. Garneau.

First, I dispute your characterization of government policy. I think our government policy is quite clear, and we actually have it in the form of a policy directive to the CRTC. We're in favour of choice, and we're in favour of competition. I don't think anything could be clearer.

Throughout my tenure as industry minister I've used that as the guiding light for policy decisions, some of which do tend to be controversial. It's the same test I used to implement the wireless auction results to make sure we had new entrants in wireless. It's the same test I use in terms of Internet access.

I think Canadians understand that policy. I believe the players in this particular area, the telecom players and the Internet players, understand that policy: competition and choice. I know it's your job to disagree with that, but that's pretty clear.

Mr. Marc Garneau: But I would say to you, Minister, that the reason you overturned the CRTC is that the CRTC is trying to interpret its mandate. For example, it argues that in 2006 it interpreted in its fashion the directives it received from one of your predecessors, Mr. Bernier, with respect to how it should deal with competition. Now, we can agree or disagree, but the point is that obviously your opinion is different from what Minister Bernier had decided back in 2006, so you overturned his decision.

On the question of Globalive, which is another matter on which you overturned the CRTC decision, of course now we're taking it to the courts.

The point is that in a proper working government it seems to me there should be very few instances in which the CRTC is overturned.

Hon. Tony Clement: And there are. I can't remember the exact numbers, but of some 2,200 CRTC decisions, we varied three and referred three back. I really think this is the exception rather than the rule. So I disagree with your characterization.

Mr. Marc Garneau: Minister, where are—

Hon. Tony Clement: Can I answer your questions? Is that possible?

Mr. Marc Garneau: Well, I think you just did.

Hon. Tony Clement: Well, I haven't answered all of your questions. I'd like to continue on and turn to the other topic you raised, which was my use of Twitter.

I would just say to you that we as public officials and as politicians should use every means at our disposal to have a dialogue with Canadians, to be accountable and responsible with and to Canadians.

I have probably thousands among my followers—

Mr. Marc Garneau: Should that include contempt for Parliament?

Hon. Tony Clement: Excuse me....

Mr. Marc Garneau: Should that include contempt for Parliament?

Hon. Tony Clement: Of course it doesn't.

So I would say of the 12,000 followers I have, probably 2,000 to 3,000 of them are media, a great many of which are Canadian media. So articulating government policy via social media is no different from issuing a news release or holding a press conference or using other means that have traditionally been available to politicians. I don't think you should fear that. I would encourage you to open your arms to that.

• (1650)

Mr. Marc Garneau: I would say to you that when I was president of the Canadian Space Agency—and it was before tweeting—if the Minister of Industry wanted to make me aware of something, he or she informed me so that I would know before it became public to everybody.

Hon. Tony Clement: Well, I can assure you that my first allegiance is to the people of Canada, not necessarily to the chair of the CRTC, and I make no apologies for that.

Mr. Marc Garneau: I think you made that very clear.

Hon. Tony Clement: But I still respect him.

Mr. Marc Garneau: What is your policy on net neutrality, Minister?

Hon. Tony Clement: I think I raised that issue in my remarks, Mr. Garneau. I indicated that the CRTC has a policy they have articulated on net neutrality, which indicates to the incumbents and other Internet service providers that they cannot simply shape traffic via throttling if they have not successfully used other tools. The other tools that are available to deal with net neutrality, which I favour, of course, are investing in your network and using other less intrusive means of dealing with traffic shaping, if that is your goal, and you have to be transparent about it.

So I agree with the CRTC that a provider can't just wake up one morning and decide to shape its traffic without having a dialogue with its customer or consumer, and without organizing its affairs so that it uses other means available to deal with congestion, if it does exist, before using throttling.

Mr. Marc Garneau: You realize, Minister, we're hearing about this for the first time today. Where is your policy?

The Chair: Mr. Garneau, you're way over time. Thank you.

[Translation]

Mr. Cardin, you have seven minutes.

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chair.

Ladies, gentlemen and Minister, good afternoon and welcome.

This all began with the 2006 Bernier decision. We see that, in your Order in Council P.C. 2009-2007, you directed the CRTC to review Broadcasting Decision 2008-117 and Telecom Order 2009-111 regarding speed matching. However, at that time, the CRTC was clearly protecting ISPs' competitiveness against the wishes of incumbents. Despite that, you ordered the CRTC to review those decisions and give priority to Bell's arguments.

Why were the CRTC decisions on speed matching perceived as poor? Why did they need to be invalidated?

[English]

Hon. Tony Clement: Certainly again our guiding principle is competition and choice.

[Translation]

We base ourselves on consumer choice and competition principles.

Mr. Serge Cardin: Yes, but, in that case, Minister...

[English]

Hon. Tony Clement: I believe our dialogue with the CRTC on that issue, the speed-matching decision issue, does correlate to those principles. We wanted to make sure that Internet markets were constructed in such a way that Canadians can receive the full benefits of the Internet and the digital economy. So when as a

cabinet we directed the CRTC to reconsider those decisions, that purpose was clearly framed in that reconsideration. We said in the order in council that it's critical that the regulatory regime provide a cohesive, forward-looking framework that provides the proper incentives for continued investment in broadband infrastructure, encourages competition and innovation, and leads to consumer choice.

In my view, it all fits within the idea that competition and choice are important for consumers and important for our economy.

[Translation]

Mr. Serge Cardin: This is the default response to almost all questions.

However, in this particular case involving variable speeds, this approach directly favours Bell. People who spend less time on the Internet choose Bell as their service provider, and the competition is completely eliminated. We are wondering if Bell now has the power to order your government to review the CRTC decisions. Is Bell now in charge?

[English]

Hon. Tony Clement: No. Clearly we look at each issue independently, but with a view to being consistent in the dialogue that we have with the CRTC. I think in that case we were consistent, that we wanted to give consumers the best services available. That's what speed matching is all about. I think it has borne itself out as the right decision. Maybe, Monsieur Cardin, you and I disagree, but I think ultimately we are being consistent and being in favour of the consumer.

• (1655)

[Translation]

Mr. Serge Cardin: You know that, since the Conservative government has been in power, several decisions have been made that were not in the best interests of consumers, ISPs and competition in the Internet-providing community.

While decisions were favourable to Bell or other incumbents, the government never got involved.

The one time the CRTC protected competition, your government asked it to review its decision and prioritize Bell's key arguments.

Do you not feel that you are sending the CRTC totally conflicting messages by asking it to review its decisions on usage-based billing, which was fully compliant with the spirit of your Order in Council 2009-2007?

Hon. Tony Clement: I think it is important to have a network that works for the consumers. It is important to have, as I said before, choices and competition on the market. The 2006 decision clearly outlined our position.

[English]

You asked me whether I'm doing Bell's bidding. I don't think Bell would come here and say I'm doing Bell's bidding when it comes to usage-based billing, I can assure you of that. They have a very different position from what I have, and I say that with respect, but that's the reality of the situation.

I think for our economy to not only survive, but thrive, we do need more choice and more competition. This particular segment of our economy is moving at the speed of light, and we have to ensure that interests are well balanced and that if a particular provider is not providing good service or good choices or pricing packages that meet the consumers' needs or a small-business person's needs, or a creator's needs, that there be other choices available to those people in our society. I think that's very important.

[Translation]

Mr. Serge Cardin: Some 500,000 people speaking out against a decision in a short period of time can obviously influence you. This kind of reaction can make you change your mind about Bell. However, you never gave any orders; Bell asked the CRTC to provide the 60-day report. After that, one thing led to another. You had to reluctantly support this request, since it complied with the Bernier decision, which calls for the least amount of regulation possible. This is clearly confirmed by one of the directives you gave the CRTC as part of your Order in Council, and it states the following:

(d) the impact of these wholesale requirements unduly impairs the ability of incumbent telephone companies to offer new converged services, such as Internet Protocol Television (IPTV).

This was the directive given, and the way to meet it is through usage-based billing, ostensibly to free up the network, which would include IP television.

Could you explain to us why Decision 2008-117 and Order 2009-111 on speed matching were not compliant with the 2006 Bernier decision?

[English]

Hon. Tony Clement: As I said, we had a back and forth between the cabinet and the CRTC. The CRTC concluded that without wholesale services at higher speeds that match retail offerings, you have a duopoly between telco and cableco in that area, unless it matched. Therefore, the duopoly would be continued. I think that's the decision of the CRTC. We let that decision stand, and ultimately I think give-and-take is important.

You mentioned earlier in your remarks about the response we got from Canadians. I make no apologies for reading e-mails and reading tweets. If people want to send me smoke signals, that's okay too. The fact of the matter is, by good coincidence and by good policy, Canadians agree with us. Usage-based billing imposed on wholesalers is a bad thing for consumers, for small businesses, for entrepreneurs, and, by good policy and by happy coincidence, we're on the same side as Canadians.

• (1700)

The Chair: Monsieur Cardin, I know there are lots of questions, but your time is way over. I was trying to allow the minister to answer your questions.

Now we need to go to Mr. Lake for seven minutes, please.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

When we were hearing from witnesses before the committee, one of the things referred to was that only 6% of Canadians are actually affected by this decision. Maybe you could speak to the importance

of that 6% of Canadians and the ISPs that serve them, in terms of competition in the marketplace.

Hon. Tony Clement: I think this is an important point, because while they represent a small segment of the marketplace, in many cases they can help drive choice and competition. That's how competition works. If you know that a competitor of yours is offering a product that is gaining traction and ground and support, and consumers are attracted to it, then as a provider you're more likely to rearrange your offerings to meet that competitive threat.

While it is simply 6% of the market, I think it is important to realize that competition does exist, that people, if they so choose, can make different choices. That's why, by forcing a similar pricing model on those wholesale independent ISPs, what you're doing is eliminating the choice. That is what I've found most concerning about the original CRTC decision.

It's a small part of the marketplace. I get that, but at the same time it's an important part of the marketplace, so that we can preserve some balance. Otherwise you would have basically a monochrome product offering and less choice in the marketplace, as a result.

Mr. Mike Lake: There's been a lot of talk about the 2006 policy direction. Opposition members have talked about it a lot. I wonder as I read it, though, if they've ever actually read the policy direction, because it talks significantly about the market; it talks significantly about competition and competitive neutrality. As you mentioned, it instructed the CRTC to rely on market forces to the maximum extent feasible, and when using regulatory measures, to ensure technological and competitive neutrality where possible, to enable competition from new technologies, and not to artificially favour either incumbents or independent ISPs.

Maybe you can expand on that a little bit. It seems to me that when I read that, this decision does not meet those criteria.

Hon. Tony Clement: The CRTC did a lot of work after the policy direction, not only working on the directive itself on a forward-looking basis but also doing a comprehensive review of the current policies that were in place at the time—in 2007 and 2008. When it completed its reviews, there were a lot of measures it took to be more consistent with the policy direction. It really was a watershed moment for our government and for public policy in this area.

The commission changed its administrative rules, changed some of the requirements, found that some of its earlier requirements were disproportionate or irrelevant relative to a market-based approach. It really was a whole architecture that was created as a result of that.

The next big step was of course on the wireless side, reserving spectrum for new entrants. That's an important element of this, I believe, as well—when you look at telecom from the broader perspective, not just the Internet perspective. Again, consistent with competition, consistent with choice, it was a huge decision, which allowed for more competition in the wireless.

We're seeing the benefits of that. We're seeing even the incumbents offering more services that are geared to what they see as the competitive threat from the new entrants. That's all good. That's the kind of thing you want to see in the marketplace: choice, variation on pricing models and service models, and so on.

I think we can look back on this past five years and say we have ushered in a revolution, when it comes to these very important areas of our economy.

• (1705)

Mr. Mike Lake: You've indicated that regardless of the CRTC decision, cabinet will be overturning the ruling. I want to talk a little bit about that sort of relationship between the CRTC and the government. You mentioned this a little earlier. How many times has the government overruled the CRTC?

Hon. Tony Clement: There were something like 2,200 decisions just in the telecom space, not even including broadcasting, because obviously the CRTC is the regulatory body for both telecom issues and broadcasting issues. Carve away the broadcasting issues for a second. I believe there were something like 2,200 rulings by the CRTC over the course of our tenure in government. Of those, we varied three, and we referred back another three. That's six out of 2,200.

This whole accusation that we are stripping away all the authority of the CRTC, that somehow we have now stood in the place of the CRTC, that's just not accurate. But when we have to defend the policy directive, choice, and competition for consumers, we will do so.

Mr. Mike Lake: Okay, that's what I was going to ask. There are some who would ask, regardless of the numbers, why the government should be allowed to tell the CRTC, an arm's-length agency, how to do their job.

Hon. Tony Clement: The first thing I'd say is it's in the act. The Governor in Council, the cabinet, has the ability, the right, indeed the obligation under the Telecommunications Act to vary or refer back a decision that cabinet feels is contrary to public policy. And you don't do that, believe me, every day of the week. You use that power sparingly, but in certain instances it is necessary to use it if we feel that the CRTC has in some way veered away from the sound public policy that has been put in place. That's the only time we should do that, and that's the only time we do it.

The Chair: Ladies and gentlemen, one thing that is not covered under the CRTC regulatory regime is how close your BlackBerry is to the microphone. The interference makes it impossible for the translators to translate. If you could make sure it's a distance away, then we won't get the interference.

Now on to Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you, Minister, for being here.

The revolution you brought in has led to a consumer revolt in this country. That's what we are seeing with the UBB, the pressure coming from some of the incumbents for everything from throttling to attempting UBB. You look at the headlines, even today: Rogers to Take Fight Over TV Fees to Country's Top Court After Narrow Loss; Gloves Are Off Over Wireless Airways Space; Get Ready to Pay More For TV.

There were several complaints prior to this by all those in the industry. There were decisions that led up to this moment. But what we have now is a dog's breakfast. You say you want to improve competition, and then you talk about the spectrum option that we

had, but you screwed up the last one. We now have a court case and greater uncertainty.

What makes you think that Canadians can trust you with this important asset for the next round?

Hon. Tony Clement: I guess I disagree with your characterization of my tenure as industry minister. I hope you don't mind if I do that.

I would also say that we have been crystal clear. We favour policies that give more competition and choice to consumers, whether in wireless, Internet, or other aspects of the sector. And if we feel that something might be threatening that competition, we regard it as a huge threat to the future of our economy. For example, Canada should be a leader as a venue for cloud computing, but if we have the wrong structure in place then that will not occur in this society. The stakes are high.

You talk about some of the disagreements I've had with the sector. I make no apologies for that. I think I'm sticking up for consumers, creators, businesses, innovators. That's my job.

• (1710)

Mr. Brian Masse: How good is it for them now? The system that you put in place, or the process for the last spectrum option, now has a Canadian government in the courts, because you overturned the CRTC. How is that good for consumers? How is that good for a company looking to invest in Canada? You allowed different rules for that spectrum option, and others who came into the market felt that it was not fair, went to the courts, won, and now you're going to have to see a court case unwind maybe all the way to the Supreme Court. So there's uncertainty about investing in the company. There's uncertainty about others investing and who the real competition is.

Then, too, we have another spectrum option coming up. What's going to happen? Are we going to have another court case for the spectrum option? That kind of thing delays innovation and investment in the industry. What are you going to do about this spectrum option this time?

Hon. Tony Clement: First of all, no one likes being in court, but there are times when one has to be....

Mr. Brian Masse: But you put yourself in that position.

Hon. Tony Clement: Excuse me, Brian, but I don't think I put myself in that position. We as a department made a factual decision that Globalive was as Canadian as it needed to be under the Telecommunications Act. CRTC disagreed. We are in court because this has been taken to court by one of the other players. It's their right to do that. But it doesn't change our motivation. We have legal reasons to think we're right about the court case. I won't bore you with those details. But behind the legal reasons, there's also the public policy—more competition, new entrants, the idea that people have choices in their wireless, the idea that people are not beholden to a duopoly or an oligopoly. I thought you and I might be agreeing on that, actually.

Mr. Brian Masse: Well, I do, but the problem is the process that we just went through—the spectrum auction—hasn't created the certainty I think the industry needs.

Hon. Tony Clement: Well, you know I used to be in business, Brian. There is certainty. Business people create certainty. But you know what? When you're in business, you're not going to get 100% certainty. So they have to suck it up and deal with that. That's why they're in business—

Mr. Brian Masse: Well, we're talking about billions of dollars in public money here too. This is an asset for Canadians.

Hon. Tony Clement: That's fine.

Mr. Brian Masse: Before the next spectrum auction, is a digital strategy going to come out, or are you going to have the auction before your digital strategy?

Hon. Tony Clement: I'm sorry, I missed the first part of your question.

Mr. Brian Masse: The digital strategy you mentioned in your speech, when is that going to be available for Canadians? We've needed this for a long time. Is that going to be announced—

Hon. Tony Clement: I mentioned the spring, yes.

Mr. Brian Masse: In the spring. Is that going to be before the spectrum auction or after the spectrum auction?

Hon. Tony Clement: Well, elements of it will be before and elements will pertain to.

Mr. Brian Masse: Okay. There is already a fight between some of the operators about how that should be done. Wouldn't it make more sense to have a digital strategy and then roll out the spectrum auction to make sure it is going to be by the rules—

Hon. Tony Clement: I think that's what I'm saying, yes.

But some of it has to do with the actual details of the spectrum auction. So we can have some broad principles that can come out in the spring. We've just closed off the consultation on the 700 megahertz. We've had the consultation on the 2500. So we're going through the submissions that have come in on that, and in due course—pursuant to good public policy—we'll be able to give the industry as well as Canadians our best take on how that should proceed.

Mr. Brian Masse: If that auction leads to another lawsuit, do you think that's a good or a bad thing for Canadians?

Hon. Tony Clement: As I said, no one likes to be in court, but on the other extreme I'm not going to fold like a three-dollar suitcase because somebody is upset that I'm on the side of consumers.

Mr. Brian Masse: Well, it wasn't actually on the side of consumers, because the CRTC ruled—

Hon. Tony Clement: I was on the side of consumers—

Mr. Brian Masse: No, actually what you've done through that is you've delayed investment into Canada with this.

Hon. Tony Clement: No, not at all. What I've done is said—

Mr. Brian Masse: There is greater uncertainty today than there was before. We have this auction available for us, which is precious in terms of a resource, and we're going to risk billions of dollars from it. How do you guarantee that you're not going to—

Hon. Tony Clement: I don't know where you're coming from on that, Brian. The fact of the matter is, no one is investing in 700 megahertz yet because they don't know what the rules are. But we

are asking them for their opinion, which is the good way to do process on public policy. We've just closed off that consultation.

And in the case of the spectrum auction that occurred in 2008, people bid, people got spectrum. They are using the spectrum. There are actually phone sets out there and devices out there that use that spectrum. It's growing. There is more competition. It means that the incumbents have to sharpen their game and sharpen their pencils for the consumer. I can't imagine you're against that.

• (1715)

Mr. Brian Masse: No, I'm not against it. What I want to see is a fair, open process, so when we actually get it out there we're not going to have a situation where we end up having lawsuits again—

Hon. Tony Clement: Me too.

Mr. Brian Masse: Well, it's because of your actions as a minister, overturning the CRTC again—

Hon. Tony Clement: No, I think it's because I was—

Mr. Brian Masse: —that they had an opinion that there was an unfair process.

Hon. Tony Clement: Well, they have an opinion that is guided by their corporate interests, but I'm not here for that. I'm here to execute good public policy.

Mr. Brian Masse: The CRTC is not a corporation.

Thank you.

The Chair: That's well over time. I tried to give the minister a minute to respond to your question there.

Now we're going to the second round of five minutes, and we need to keep that for fairness.

Mr. Rota, for five minutes please.

Mr. Anthony Rota: Thank you, Mr. Chair.

Thank you, Mr. Minister, for being here today.

The CRTC, as you know, is an independent organization. It regulates and supervises Canadian broadcasting and telecommunications systems. It's independent. It's there. It's supposed to do its job. Its mandate is to ensure that the broadcasting and telecommunications systems serve the Canadian public.

The CRTC gets its objectives from the Broadcasting Act and the Telecommunications Act, which guide its policy decisions. From what I can gather, it's using for its guidelines, its beacon, what was said by the industry minister at the time—your office—in 2006, which was that they were moving to market forces.

Now, market forces sounds good. It would seem to me that when you talk about market forces, you just open up the doors and let the market prevail. I hear it from the other side. It seems to be a Conservative mantra to just let the market take care of it, and everything will take care of itself. I have some reservations about that.

Earlier, when you were asked what you really meant and what the government policy is, it was choice in competition. It sounds good. It's fluffy. It sounds good, but it really doesn't give me anything to go to. Five years go by, and all we have to offer the CRTC as objectives is to go with market forces and choice in competition. If it doesn't suit your office, then it gets overturned.

What I see here is a return to what happened years ago. When I look at the UBB and what happened in the last month or so, it's almost as if there was a crisis that showed up again. It was created. Guess what. The minister comes across as a hero. Isn't that lovely? That's like saying that here's the guy who set the fire, and he's a hero, because he called the fire department. I'm sorry, but I'm having a hard time with this.

There was a series of decisions made regarding the UBB that are consistent with what I believe was given in 2006. Are you saying that these guidelines have been changed or that the CRTC didn't follow them? If they didn't follow them, what is it that didn't quite match up with the original policies?

Hon. Tony Clement: Let me say a couple of things in answer to that series of questions.

First of all, of course, I'm distilling down competition and choice for the purposes of this hearing. But I think I referred to the whole process.

Mr. Anthony Rota: Did you say “stilling down” or “dumbing down”?

Hon. Tony Clement: No, I said “distilling”.

Mr. Anthony Rota: Thank you, I just wanted to clarify that.

Hon. Tony Clement: I said distilling, but not in the alcoholic sense, I can assure you.

Certainly there was a whole process engaged in by the CRTC to implement the policy directive of 2006. As I said, they reviewed all of their purposes, procedures, and regulations. There's a whole architecture involved there. I think Canadians watching or listening to this hearing should be assured that there was a lot of consideration, a lot of good public policy making, by both the regulator and the government, in this regard. I just want to put that on the record.

There have been 2,200 decisions since the beginning of 2006. As I said, there are several that we feel are outside the policy directive and would have a deleterious impact.

On the UBB decision, I have been very clear. I hope I've been articulate; that's for others to decide. But I've said if you want choice and competition, you can't force down the throats of the independent ISPs a business model that means that they can't compete with their own business model. That's not choice and competition.

Mr. Anthony Rota: I'm not debating that. I just thought it was kind of interesting that here's the policy that is given to the regulating agency. They make a decision based on what was there, given by the government, and all of a sudden they're being overturned. It just seems, again, that there's this confrontation.

Was there any discussion beforehand? It seems that all of a sudden, on January 25, at the eleventh hour, there was this overruling. Was there no discussion coming up to that?

● (1720)

Hon. Tony Clement: I can speak to that. Based on the advice I received from the department, I was not able to speak to either the commission or the public about the issue until the appeal period was over. The first peep you heard out of me was after the appeal period was over.

The Chair: Thank you, Mr. Minister.

Mr. Rota, you're out of time.

Now on to Mr. Braid for five minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you, Minister and officials, for being here this afternoon.

Mr. Minister, in your comments in your presentation with respect to usage-based billing, the UBB issue, you've made this distinction between the retail and the wholesale and that we have this retail model of UBB being imposed, if you will, on the wholesale relationship with the independent ISPs. Why are you making the distinction between the retail and the wholesale, and why does this underscore why this is not an appropriate course of action to follow?

Hon. Tony Clement: As I think I mentioned, retail is not under the purview of the CRTC to regulate the prices or the pricing structure. Wholesale exists because of the determination, which I think is factually correct, that you have to carve out some of the broadband that's available for independent ISPs; otherwise you would have a monopoly or a duopoly situation. So the CRTC does have some regulatory weight in the wholesale area, because they are the ones that created the wholesale market on behalf of Canadians and said independent ISPs have to gain entrance to that bandwidth that is made available by regulatory authority, by Bell in that particular case. So that's why wholesale is different from retail.

The only reason why the debate has become enmeshed a little bit is that one of the arguments against the government's position is that if you allow wholesalers to create an all-you-can-eat buffet kind of pricing model, it will affect the retail. This is the scary argument that is employed to say to everyone else in the universe who isn't part of the 6% of the market, the other 94% of the market, that if we don't have a handle on this and force our business model on that 6%, it's going to affect costs in the other 94%.

I've been pretty clear on that. That's a worthy debate to have, but I've seen no evidence of that. I've seen no evidence that this 6% tail drives the 94% dog, and quite frankly there's no evidence of that. There's no evidence that there is congestion as a result of any of that, and there's no evidence that the pricing structure of UBB in the retail market is the solution if congestion did exist. Because if you look at the pricing structure, if you've got a 25 gig or 60 gig cap over which you're paying per gig, under that model if you're downloading Netflix at 3 a.m. and go over your cap, you're charged per gig, even though there's no congestion. No one is saying there's congestion at 3 a.m. Everyone's saying there might be congestion at 6 p.m. or 8 p.m., or who knows what they're saying, but there's no correlation in the pricing structure on the retail side to fix that problem, if it's a problem. And that's where I get my dander up.

But quite frankly, I'm not here saying I'm regulating that tomorrow, because as long as we create a worthy competitive choice-based market, then if you don't like what's happening at 6 p. m. on your Internet service provider, go to somebody else. That's the best solution, in my view.

Mr. Peter Braid: Thank you.

As we know, the CRTC is reviewing its original UBB decision through a 60-day process. As part of that, they're engaging in a public consultation process. In your mind, Minister, what would you consider an acceptable revised decision? What would an acceptable revised decision from the CRTC look like?

Hon. Tony Clement: I appreciate the question, but I don't think it's fair to the CRTC or to the process that I rewrite their decision for them. They're reviewing their decision in good faith. I think that's a commendable thing for the CRTC to do. I will let them, of course, do that. When that decision was communicated by the CRTC chairman, I said it was great that they were reviewing the decision, but they should keep in mind that if they came back with the same decision they had before, that doesn't solve the problem, because we still believe that this does not facilitate competition and choice. So that's the prism through which we are observing the CRTC process. And really it's not only for Tony Clement or anyone else to decide what is acceptable; really it's up to the consumers. And let's give them the ability to say this is acceptable or they're going somewhere else. That's the best model, I think.

• (1725)

The Chair: Thank you, Mr. Minister.

Thank you, Mr. Braid.

We'll now go to Monsieur Cardin *pour cinq minutes*.

I understand you're going to be sharing your time with Monsieur Bouchard.

[*Translation*]

Mr. Serge Cardin: Thank you, Mr. Chair. I will share my time with Mr. Bouchard.

According to Mr. Lake, the 2006 Bernier decision is not supposed to favour certain independent or incumbent companies over others. However, Order in Council P.C. 2009-2007—I am getting back to what I was talking about earlier—urges the CRTC, in different terms, to ensure that its decisions are not detrimental to Bell's IP Television. This is not a neutral position. The CRTC decision on speed matching ensured the survival of ISPs and thereby protected competition. Order in Council 2009-2007 asks that the decision be reviewed in Bell's favour. Why?

[*English*]

Hon. Tony Clement: There's a whole lot of detail in there, but I guess what you're seeing throughout the five-year period is a grappling, if I can use that term, of some of the important issues in the Internet age by the regulator, and the interaction between the regulator and the government that is, on a principle-based basis, trying to make sure there's more competition and choice.

Monsieur Cardin, there may be different decisions of the CRTC you agree or disagree with, or I agree or disagree with, but my personal opinion is that cabinet should ultimately intervene when a

decision—if it were to stand—would have such an impact on the ability for choice and competition to exist that there would really be no other alternative to cabinet but to vary or refer back the decision.

We're trying to be fair and reasonable here. I don't think it's my place to overturn every single decision of the CRTC, nor is it my place to ignore every single decision of the CRTC if it has a deleterious effect on the marketplace. That's the balancing that we're trying to pursue here.

[*Translation*]

Mr. Serge Cardin: My colleague is dying to ask you a question.

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Good afternoon, Minister. Good afternoon, ladies.

Following the CRTC decisions on usage-based billing, citizen Jean-François Mezei sent a petition to the Governor in Council asking that the government suspend the application of those decisions. Why has your government not published this petition in the Canada Gazette?

[*English*]

Hon. Tony Clement: Thank you for the question.

I first heard about this issue through a tweet from a citizen. When I received that communication I inquired through my office as to why that was the case. I learned that if the CRTC suspends a decision—which is what they did in this case—in the normal course it would not publish the petition. But I believe we have agreement with them that they will publish the petition. I think it's going to be gazetted in the next three weeks.

I want to thank the citizen on Twitter who brought this to my attention. We have acted because it's the right thing to do.

[*Translation*]

Mr. Robert Bouchard: This citizen is basically somewhat in agreement with you.

Would you be prepared to order the CRTC to pre-establish the basic status of gateway service so that it would be regulated proportionally and effectively, in the interest of consumers?

• (1730)

Hon. Tony Clement: As I said with regard to usage-based billing, it is important to have choices and competition. That's why we have reacted and I announced that the CRTC should make another decision. The original decision did not fit our system.

[*English*]

That's why I communicated that decision. If you're referring to retail, as opposed to wholesale—I'm not quite sure whether you're referring to all of UBB or just wholesale—I think I'll stand by my finely balanced remarks in my presentation where I said that there would be no need for further intervention on the retail side if competition were to exist. Then people would have choices. They could go somewhere else if they didn't like what their retailer, their ISP, was providing to them. So to me that is the key test of whether the market is starting to function in a way we can recognize.

The Chair: Thank you, Monsieur Bouchard and Monsieur Minister.

That's all the time we have right now.

The Chair: Then that's the end of the meeting.

Minister, you've dedicated your time here, but if you want to make some closing remarks and have time—

Hon. Tony Clement: No, it's okay.

We're adjourned.

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